

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7287 of 1992

For Approval and Signature:

Hon'ble Mr. Justice R. Balia

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SUMATRAI B DESAI

Versus

DIST DEVL P. OFFICER

Appearance:

MR YN OZA for Petitioner

MR DD VYAS for Respondent No. 1

GOVERNMENT PLEADER for Respondent No. 2

MR KR RAVAL for Respondent No. 3

CORAM :R. Balia, J.

Date of decision: 12/03/96

ORAL JUDGEMENT

The petitioner seeks a mandamus against respondent No.1, District Development Officer, and respondent No.4, President of Valsad District Panchayat, Valsad, to remove the offending construction made by respondent No.3 on the plots Nos. 1 & A of village Abrama, and to implement the order dated 8th May 1986 (Annexure "A") passed by the District Development Officer for removing the alleged illegal construction, order dated 12th August 1988 (Annexure "B") passed by the Additional Chief Secretary, ordering summary eviction of the respondent No. 3 from the plots in question, and order dated 4th January 1990 (Annexure "C"), passed by the Additional Chief Secretary, Revenue Department,

affirming the order dated 12th August 1986. According to the averments made in the petition, after the aforesaid orders have been made against respondent No.3, he filed Regular Civil Suit No. 18 of 1991 before the learned Civil Judge (S.D.), Valsad. In that suit, respondent No.3 obtained an injunction against implementation of the resolution of the District Panchayat implementing the aforesaid orders. However, subsequently, the District Panchayat, Valsad, passed another resolution, whereby implementation of the orders of the District Development Officer and the Additional Chief Secretary was suspended. As, by these resolution, the orders at Annexure "B" and "C" were not to be implemented, respondent No.3 did not press his application for temporary injunction in the civil suit and, in result thereof, the interim injunction granted by the learned Civil Judge (S.D.), Valsad, was vacated.

Without going into the merits, it is apparent from the averments made by the petitioner himself that the civil court had granted injunction against implementation of the orders for which a mandamus is sought in this petition. Interim order has been vacated, because the District Panchayat, Valsad, who had earlier ordered for removing encroachment and evicting respondent No.3, had passed another resolution against implementation of the said order during pendency of the civil suit. That is to say, when the implementing authority had agreed to maintain status quo during pendency of the suit, it was not necessary for respondent No. 3 to pursue the application for injunction. It is not disputed before me that the civil suit is still pending in which the petitioner is also a party.

In the aforesaid circumstances, it would be highly unjust and improper to direct the authorities to implement the orders at Annexure "A", "B" and "C" on the ground that the civil court has vacated the interim injunction and now there is no impediment in implementation of the operative orders which are in force. If respondent No.3 has been led to alter his position vis-a-vis operative order of injunction in his favour, as a result of resolution passed by the District Panchayat, Valsad, containing assurance not to implement orders until the result of the civil suit, it would only be appropriate that, if the implementing authorities want to resile from their assurance or the petitioner wants a mandamus to implement the aforesaid orders in absence of any speaking order from the civil court, respondent No.3 is given an opportunity to approach the civil court for reviving the interim injunction granted in his favour so

that the civil court, where the suit is pending, may, after hearing both the parties, and considering the material before it, reach its own conclusion about continuance or vacation of the interim order on merits of the case. One party cannot be put to advantageous position because the other party is led to alter his position on the ground of conduct of the implementing authority assuring to protect the interest of the parties during the pendency of the litigation. Therefore, in my opinion, this petition must fail.

Rule is discharged. However, it is made clear that this decision does not reflect on merits nor would it come in the way of the petitioner making an application before the civil court in the pending suit seeking appropriate directions in the matter, so that respondent No.3 would have a fair chance to seek protection of his rights in the pendency of the suit in the peculiar circumstances of the case. There shall be no order as to costs.

(swamy)